srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4191 OF 2007.

Ganpatrao Balu Pomaje,
Age: 50 years, Occu: Agri.
R/o: Ward No.2, Kurundwad,
Tal: Shirol, Dist: Kolhapur. ..Petitioner.

Versus.

1. State of Maharashtra
Through Urban Development Dept.,
Mantralaya, Mumbai.

2. The Collector of Kolhapur.

3. Trambak Dhengle-Patil,
at present working as Project Officer
in Jaysingpur Mun. Council, Jaysingpur.

4. Rajendra Phatale, Cheif Officer,
Kurundwad Municipal Council,
Kurundwad.

5. Sou. Kavita Annasaheb Jong,
r/a: Ward No.5, Kurundwad,
Tal: Shirol, Dist: Kolhapur. ..Respondents.

Mr. Y. S. Jahagirdar a/w D. V. Sutar for the petitioner.

Mr. A. Y. Sakhare a/w Mr. Chirag Shah i/b M/s. YKS Legal for the respondents.

Mr. A. H. Palekar A.G.P. for the respondent nos. 1 to 3 - State.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.

DATE: JULY 31, 2007.

ORAL JUDGMENT. (D.G.Karnik,J.)

1. Rule. By consent rule is made returnable forthwith. Heard learned counsel for the parties.

2. By this petition the petitioner challenges the judgment and order dated 4th May 2007 passed by the respondent No.2 - Collector of Kolhapur. By that order respondent no.2 rejected the application made by the petitioner for declaring that the respondent no.5 had incurred disqualification for being a councillor of Kurundwad Municipal Council under section 3 of the Maharashtra Local Authority Members Disqualification Act, 1986 (for short, "the Act") and for a further declaration that the respondent no.5 was deemed to have vacated her office as a councillor.

3. Elections to the posts of councillors to the respondent no.4 Municipal Council took place on 19th November 2006. According to the petitioner, the respondent no.5 contested the election as a member of **Shahar Sudharana Aghadi**, a pre-election front or Aghadi of independent councillors. This fact is disputed by the respondent no.5, who claims to have contested the election as an independent candidate and not as a member of any pre-election front or agadhi. However, being a disputed question of fact, the same is not presently pressed by the learned counsel for the petitioner.

4. It appears that the post election another front or Aghadi by name **Janvikas Aghadi** was formed by same independent councillors. There is a dispute

between the parties regarding the date of formation of new Aghadi and also its members.

5. Elections to the post of the President of the respondent no.4 Municipal Council were to be held on 17th December 2006. Respondent no.5 filled in her nomination for the post of the President. She was sponsored by the Janvikas Aghadi. It is alleged by the petitioner that the respondent no.5 has joined the Janvikas Aghadi and therefore she was sponsored by the said Aghadi. According to the petitioner by joining the Janvikas Aghadi the respondent no.5 has committed breach of sub-section (b) of Section 3 of the Act. The petitioner, therefore, filed an application before the Collector the respondent no.2 herein for a declaration that the respondent no.5 has incurred a disqualification for being a councillor by reason of her joining the Janvikas Aghadi after her election. By an order dated 4.5.2007 the respondent no.2 rejected that application. That order is impugned in this petition.

6. We have perused the order dated 4.5.2007. To say the least, the order is very laconic and does not give any reasons for the decision. The respondent no.2 has not even considered the points raised by the petitioner for the alleged incurring of the disqualification by the respondent no.5. In the 1st

to 3rd short paragraphs the respondent no.2 has very briefly given the history about the election of the respondent no.4 Municipal Council and thereafter in the 4th paragraph he has framed four points which arose for his consideration. Thereafter he has again repeated the said four points in his order along with his answers thereto as "NO". He has not given any reasons whatsoever for answering the first three in the negative. Only one word answer "No" is recorded by him. So far as point no.4 is concerned, the reasons given are in two sentences. We find that the reasons are totally dissatisfactory. The impugned order determines the question of incurring or non incurring of a disqualification under a statute and certainly a quasi judicial order. In the circumstances it was absolutely necessary for the respondent no.2 to give reasons for his order. By not giving the reasons for the order, the respondent no.2 has committed a grave error in law. Not only that we are at loss to understand to know why the respondent no.2 came to the conclusion that the respondent no.5 has not incurred a disqualification under section 3 of the Act.

7. Elementary principle of law that a quasi judicial authority deciding a matter affecting the civil rights of the parties is required to give reasons for its order, has not been followed. We are

informed that the respondent no.2 - Collector is one of the senior officers in the cadre of Collectors in the State of Maharashtra. It was expected of him to give reasons for his order.

8. Since disputed questions of facts as to whether the respondent no.5 has incurred a disqualification under the Act is involved in the petition, we cannot decide the said questions in this petition. In any event, as we find that the order passed by the respondent no.2 is bad in law and suffers from arbitrariness inasmuch as no reasons are given, the same is set aside and we remand back the matter to the respondent no.2 for deciding it afresh. The respondent no.2 is directed to pass a speaking order giving reasons therefor after giving an appropriate opportunity of hearing to the parties

9. Since matter pertains to the disqualification of an elected councillor, the respondent no.2 shall decide the matter expeditiously and in any event within a period of eight weeks. We make it clear that we have not expressed any opinion on the merits of the rival contentions of the parties.

10. Rule is partly made absolute in the aforesaid terms.

(D.G.KARNIK, J.) (S.B.MHASE, J.)